

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1226

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA

Plaintiff-Appellee, :

-against- :

RICHARD ANGLADA :

Defendant-Appellant. :
-----X

JOINT APPENDIX

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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New York City 10013
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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE CANNELLA

75 CRIM. 43

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		Michael Q. Carey, AUSA.
1. GEORGE SHAW		791-1934
2. EDWARD TORRES		
3. RICHARD ANGLADA		
		For Defendant:
		E. Torres - Stuart Holtzman 335 B'Way NYC
		R. Anglada - Elliot A. Taikeff 335 B'Way NYC
		G. Shaw - Darnell J. Blackett 401 B'Way N.Y.C.

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed ✓ 3 ✓	Marshal				
Violation	Docket fee				
Title 21					
Sec. 846, 812, 841(a)(1), (b).					
Consp. to viol. Fed. Narcotic Laws. (Ct. 1)					
Distr. & possess. w/intent to distr. Heroin, I. (Ct. 2)					
(Two Counts)					

DATE	PROCEEDINGS
1-16-75	Filed indictment.
1-20-75	Defts. (attys. present) Plead not guilty. Case assigned to Judge Cannella. Bonsal, J.
1-21-75	G. SHAW - Deft did not appear, bail application.. Bail fixed in the sum of \$5,000 P.R.B. Co-signed by a financially responsible person secured by \$1,000 cash to cover this indictment Indictment 75Cr.62 which was returned not related.....Cannella, J.
1-22-75	Filed notice of readiness for trial...
1-23-75	EDWARD TORRES - Filed notice of appearance by Stuart Holtzman 335 B'Way NYC Tel. 233-3333
1-23-75	RICHARD ANGLADA - Filed notice of appearance by Elliot A. Taikeff 335 B'Way NYC Tel. 233-3333
---Sec Over---	

PROCEEDINGS

18-75 Filed notice of appearance by Darnell J. Blackett 401 B'Way NYC 10012.
 19-75 G. SHAW - Filed affdvt. & notice of motion for a bill of particulars. Ret. 2-7-75...
 22-75 G. SHAW - Filed affdvt. & notice of motion for discovery....Ret. 2-7-75.....
 1-31-75 G. SHAW - Atty Darnell Blackett present...Nebbia hearing begun and concluded...Bond modified to \$1,000 cash.Cannella, J.
 31-75 G. SHAW - Filed appearance bond in amt. of \$1,000....To cover 75Cr. 62...
 1-31-75 G. SHAW - Filed remand dated 1-31-75
 26-75 G. SHAW - Filed memo endorsed on motion for discovery.... Motion disposed of on consent subject to further rulings of the Court if they become necessary..So Ordered... Cannella, J.....m/n
 26-75 G. SHAW - Filed memo endorsed on motion for bill of particulars....Motion disposed of on consent subject to further rulings of the Court if they become necessary. So Ordered...Cannella, J.....m/n...
 17-75 G. SHAW - Filed papers recvd from magistrate, docket sheet, complaint, disposition sheet, financial affdvt, notice of appearance and temporary commitment.
 8-26-75 Filed memorandum with regard to our exclusion of the statement of George Shaw which was electronically recorded****we note that such statement is properly found to be not admissible****Cannella, J...
 26-75 Filed memorandum..In amplification of the record of this trial, so as to assist a future reviewing court***under neither 18 U.S.C. 6002-6003 nor prior law is anyone other than the U.S. Atty. authorized to request an order granting immunity to a witness****Cannella, J....m/n

 24-75 ALL DEPTS - Trial begun with JURY..
 25-75 Trial cont'd.
 26-75 Trial cont'd.
 31-75 Trial cont'd. and concluded..Deft's G. SHAW and R. ANGLADA GUILTY on counts 1 and 2 P.S.I. ordered Sent. on 4-30-75 SHAW bail fixed at \$5,000 surety deft remanded. Deft ANGLADA bail fixed at \$1,000 surety bond to be posted on 4-1-75 at 4 p.m. Deft in custody of his atty until 4-1-75 by 4 p.m.....Cannella, J.
 1-75 G. SHAW - Filed deft's requests to charge..
 1-75 R. ANGLADA - Filed memorandum in support of ~~motion~~ request to charge...
 -75 E. TORRES - Filed requests to charge..
 -1-75 Filed Govt's request to charge..
 1-75 R. ANGLADA - Atty. present...k Hearing begun on bail application - Bail conditions fixed at \$1,000 on 3-31-75 is vacated..Deft is Remanded..Hearing adjd to 4-3-75 at 9:30 a.m. Cannella, J.
 4-75 R. ANGLADA - Filed affdvt. of F.E. Virella, Jr. AUSA in support of a writ..Ret. 4-8-75---

DATE	PROCEEDINGS
4-10-75	R. ANGLADA - Filed deft's reply memorandum in opposition to Govt's application that bail pending appeal be denied...
4-11-75	Filed deft's memorandum in opposition to Government's application.
4-11-75	R. ANGLADA - Filed Govt's memorandum in support of its application that the deft Anglada be remanded pending sentence and appeal.
4-11-75	Filed memo Opinion # 42241; The Court has substantial reas on to believe that Anglad poses a clear threat to the safety of Carlos Santana, and a possible threat to Asst. U.S. Attorney Virella. The Govt's application to remand the deft. is hereby granted Cannella, J. Remand Issued.
4-16-75	R. ANGLADA - Filed motion to reconsider findings as recorded in Court's memorandum and order dtd. 4-11-75.... With memo endorsed... APPLICATION DENIED... See minutes. So Ordered.... Cannella, J. Mailed notice....
4-17-75	RICHARD ANGLADA - Filed notice of appeal from post verdict determination of U.S.D.J. dated 4-11-75 revoking bail and remanding deft... Copy to U.S. Atty.
4-25-75	RICHARD ANGLADA, et, al. - Filed post verdict motion with memorandum in support attached....
4-30-75	GEORGE SHAW - Filed judgment (Atty. Darnell Blackett, present) the deft is committed to the custody of the Attorney General for imprisonment as a YOUTH OFFENDER on each of counts 1 and 2, pursuant to Ti. 18, U.S. Code, Sec. 5010(b). Sentence to run concurrent on each of counts 1 and 2 and concurrent with sentence imposed in indictment 75Cr. 62 Judge Pollack.... Deft Remanded.. Cannella, J... Ent. 5-1-75--
4-24-75	Filed Writ of H/C ad Test. to produce C.M. Santana on 4-8-75 with marshal's return.
5-7-75	Filed transcript of record of proceedings, dated 4/1/75
5-7-75	Filed transcript of record of proceedings, dated 4/8/75
5-7-75	Filed transcript of record of proceedings, dated 3/24-26-75
5-7-75	Filed transcript of record of proceedings, dated 3/31/75
5-16-75	G. SHAW - Filed commitment & entered return, Deft delivered to Fed. Detention Hq. N.Y.C. on 4-30-75.
6-6-75	RICHARD ANGLADA - Filed Judgment (Atty. Elloit A. Taikeff, present) The deft. is sentenced as a YOUTH OFFENDER on each of counts 1 and 2 to run concurrent with each other, pursuant to Ti. 18, U.S. Code, Sec. 5010(b)... Cannella, J... Deft is remanded... Ent. 6-9-75--
6-9-75	RICHARD ANGLADA - Filed memo endorsed on motion filed 4-25-75.... Motion denied exception to the deft.... So Ordered.... Cannella, J.. m/n
6-12-75	RICHARD ANGLADA, : Filed Notice of Appeal from Judgment dated 6-6-75. Copy filed To U. S. Attorney, and mailed to the deft.
6-20-75	R. ANGLADA, - Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.,

PROCEEDINGS

Filed transcript of record of proceedings, dated *APRIL 16, 1975*

Filed stipulation designating defendant's exhibit A as part of the record on appeal.

USA-338- 510 - IND./INF. (Conspiracy to distribute and possess with
Rev. 8-27-72 intent to distribute narcotic drug.)

par UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-;

GEORGE SHAW, EDWARD TORRES and
RICHARD ANGLADA,

Defendant s .

INDICTMENT

75 Cr. 43

The Grand Jury charges:

1. From on or about the 1st day of September, 1974
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York, GEORGE SHAW, EDWARD TORRES, and RICHARD ANGLADA

A5

the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederate and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant s unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

Super
OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about September 3, 1974, EDWARD TORRES, the defendant, met with Detective Ralph Nieves who was acting as a narcotics purchaser.
2. On or about September 3, 1974, EDWARD TORRES, the defendant, offered to sell heroin to Detective Nieves.
3. On or about September 4, 1974, EDWARD TORRES, the defendant had a telephone conversation with Detective Nieves.
4. On or about September 6, 1974, RICHARD ANGLADA, and GEORGE SHAW, the defendants met with Detective Nieves.
5. On or about September 6, 1974, Detective Nieves received approximately 27.66 grams of heroin hydrochloride from GEORGE SHAW, the defendant, in the presence of RICHARD ANGLADA, the defendant.
6. On or about September 6, 1974, Detective Nieves gave GEORGE SHAW, the defendant, \$600.00 and RICHARD ANGLADA, the defendant \$1000.00.

(Title 21, United States Code, Section 846.)

A6

MQC:par

SECOND COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1974,
in the Southern District of New York, GEORGE SHAW,
EDWARD TORRES and RICHARD ANGLADA,

the defendant s , unlawfully, wilfully and knowingly did
distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately 27.66 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CURRAN
United States Attorney

A7

1 the 40

Anglada - direct

200

2 the subject of drugs?

3 MR. VIRELLA: Objection.

4 THE COURT: You are leading him, but --

5 MR. TAIKEFF: I am just laying the setting.

6 ; THE COURT: In the face of an objection, when
7 there is a leading question, I must sustain it. What if
8 anything, was talked about at that time?

9 THE WITNESS: Drugs.

10 Q Tell the jury what the conversation was about,
11 identifying what was said by whom?

12 A Well, Junior was talking --

13 Q Speak up. The last juror and the spectators
14 all have to hear you.

15 A Well, Junior was talking to me for quite a while,
16 you know, trying to convince me to do him a favor of getting
17 some drugs for him, and he talked and kept on saying the
18 same things, "Will you do me the favor, will you do me the
19 favor, please. I will come out winning at the end." I
20 told him, "I don't know, Junior." So then he kept on
21 saying, "Please, Richie, I really would appreciate the
22 favor, you know, you are my sister's boyfriend, I want you
23 to help me," and I still told him I wasn't sure. He kept
24 on insinuating with the same thing until he convinced me,
25 and I said, I would let him know.

2 THE COURT: How long ago was that before you
3 were arrested?

4 THE WITNESS: In about July.

5 THE COURT: July of 1974?

6 THE WITNESS: Yes.

7 THE COURT: Two jackets disappeared?

8 THE WITNESS: Yes.

9 Q What did Junior say he wanted you to help him
10 get?

11 A Some drugs.

12 Q Did he say specifically what?

13 A Yes.

14 Q What did he say he wanted?

15 A Heroin.

16 Q How much did he say he wanted to get?

17 A An ounce.

18 Q How long did that conversation last or how long
19 were you in the house with him talking to him at that time?

20 A About 45 minutes to an hour.

21 THE COURT: Did you fix a time, Mr. Taikeff?

22 MR. TAIKEFF: Yes, your Honor. I believe I did.

23 Q Do you remember the day you went into the so-
24 called undercover car with George Shaw and Junior and
25 Detective Nieves? Remember that day?

1 cmds 60

2 is mistaken and it in effect calls attention to defendant
3 Torres' failure to take the stand, and I move for a mistrial.

4 THE COURT: The motion is denied.

5 MR. HOLTZMAN: Your Honor understands that
6 Mr. Virella's closing remarks in which he attempted to put the
7 imprimatur of the Government upon the testimony of Agent
8 Nieves. We objected, and that was the basis for my objection.

9 THE COURT: It was entirely called for by the
10 nature and the tenor of your remarks and his remarks, and
11 I therefore overruled the objection. I am not going to
12 discuss this.

13 (In open court)

14 THE COURT: Madam Foreperson and members of the
15 jury, at the outset although this has not been a very long
16 case, I have observed you and observed that you have paid
17 careful attention to it, and I thank you for that attention.

18 I also thank the attorneys involved here,
19 Mr. Virella, Mr. Taikeff, Mr. Holtzman and Mr. Blackett for
20 the valuable assistance they have been to the Court at
21 the side bar conference when we discussed questions of law.
22 And also for the manner in which they presented the case
23 to you. I thank them on your behalf for that.

24 One of the lawyers said, when you think about
25 this case there are large areas of agreement here, and on

1 cmds 61

2 the other hand there are some areas of disagreement. I
3 agree with that. It is for that reason actually that you
4 have been selected, because if there had been no areas of
5 disagreement, you wouldn't have been called at all. I
6 would have decided the case myself, and there would be no
7 need for a jury.

8 But, there are questions of fact, and you are
9 the sole and sovereign judges of the facts. You are the
10 ones which pass on the credibility of the witnesses that
11 have appeared here, and you pass also on the weight to be
12 given to any evidence that has been produced and any of
13 the stipulations which have been entered into between the
14 parties you must also consider, of course.

15 I am not going to go into great details on the
16 facts. The remarks which I will make are based upon my
17 own recollection. Any of the facts which were recited to
18 you by the lawyers suffer the same infirmity, namely it is
19 their recollection. And actually the recollection of the
20 lawyers and the Court are not binding on you whatsoever.

21 You are the judges of the facts, and you will
22 remember them. So, if I misstate any of the facts, or if
23 the lawyers have, you forget about that and use your own
24 recollection as to the facts in the case.

25

All

1 But we know the indictment is based on the series
2 of events which occurred in September of 1974, and on
3 September 3 it is alleged that the government informant,
4 Santana, also known as Junior, had arranged with the
5 Defendant Torres for the sale of narcotics to an undercover
6 agent.
7

8 Santana and Nieves went to West Houston Street and
9 Broadway on the 4th of September, but nothing apparently
10 happened. On the 6th of September Junior through Anglada had
11 the defendant Shaw come with him, and at that time Shaw
12 delivered the package to Neives inside of a Kool cigarette
13 package. Inside the package was approximately one ounce of
14 a substance which the chemist analyzed as heroin.

15 At the time the undercover agent delivered \$1600.
16 000 for Shaw and a thousand dollars to Anglada.

17 Of course, when I say that I mean this is the
18 allegation. You will have to determine what the facts are.
19 After leaving the car where the transaction took place
20 Anglada turned the money over to Shaw, the \$1000. Anglada
21 testified that this was his sole activity in the transaction.

22 Shaw continued on and testified that after receiving
23 the \$1000 they went to the apartment which he described, and
24 at that place he gave Anglada \$100 plus a spoon of material.

25 From this very cursory description of the testimony

1 2 cmcg

2 it becomes evident where the areas of agreement and d -
3 agreement are, and because of these questions of fact you have
4 been selected, as I have indicated to you.

5 Now, on any questions of law in this case it is
6 customary for the lawyers in their remarks to you to refer
7 to the law. Sometimes they do it in such a fashion as it
8 seems to indicate that they are telling you what the law is.
9 Well, you don't accept the law from the lawyers. The law you
10 must accept from the court. And you must apply the law that
11 the court gives you to the facts in the case.

12 In recent years Congress has passed a law which
13 relates to the traffic of drugs and other deleterious substances
14 One such law makes it a crime to conspire to violate the
15 federal narcotics laws. Another section makes it a crime
16 to distribute or possess with intent to distribute a controlled
17 substance.

18 The sections are so brief that I will read them to
19 you. Title 21, United States Code, 841 says, "It shall be
20 unlawful to manufacture, distribute or dispense or possess
21 with intent to manufacture distribute or dispense a controlled
22 substance."

23 Then it goes on by way of schedule to tell you
24 what the controlled substances are. And there is no question
25 at all that heroin hydrochloride is a controlled substance.

1 3 cmcg

2 That is not an issue in this case.

3 The other section of the law which is Title 21,
4 846 says, "Any person who conspires to commit any offense
5 defined in this sub-section is guilty of a crime, a federal
6 crime."

7 Those are the two very brief sections that are in-
8 volved in this particular case.

9 In this indictment the defendants are charged both
10 with the conspiracy and the violation of the law against the
11 distribution or possession with intent to distribute a con-
12 trolled substance. Where two or more persons are charged with
13 the commission of a crime the guilt of one defendant may be
14 established without proof that all the defendants did every
15 act constituting the offense charged.

16 However, you must give separate consideration to
17 each defendant and to each separate charge against him. In
18 this particular case each defendant is charged with a con-
19 spiracy and a violation of the substantive code, namely the
20 distribution or the possession with intent to distribute
21 part of the law.

22 Each defendant is entitled to have his case deter-
23 mined from his own conduct and from the evidence which may
24 be applicable to him.

25 Congress, in addition, has passed a law which says

1 4 cmcg

2 that whoever aids, abets, counsels, commands, induces or
3 procures the commission of a crime is punishable as a prin-
4 cipal.

5 In order for a defendant to aid or abet another
6 to commit a crime it is necessary that he willfully associate
7 himself in some way with the criminal venture, that he will-
8 fully participate in it as something that he wishes to bring
9 about, that he willfully seeks by some actions to make it
10 succeed.

11 We know of course that every defendant in the
12 criminal case is presumed innocent, unless and until the
13 government proves his guilt beyond a reasonable doubt by
14 credible evidence. The burden of proving the defendant
15 guilty beyond a reasonable doubt rests upon the government.
16 This burden never shifts throughout the trial.

17 The law does not require a defendant to prove his
18 innocence or to produce any evidence. A defendant has an
19 absolute right not to testify, and insofar as Torres is con-
20 cerned, you may not draw a presumption, any presumption of
21 guilt or any other inference against the defendant Torres
22 because he did not testify. A defendant who wishes to
23 testify such as did Shaw in this case and Anglada, are com-
24 petent witnesses and their testimony should not be disbelieved
25 merely because they are the defendants.

1 4 cmcg

2 However, in weighing their testimony you should
3 consider the fact that the defendant has the vitale interest
4 in the outcome of this trial, and in addition not only
5 may the defendant rely upon evidence which has been brought
6 out during direct examination, but in proving his point or
7 trying to establish something he may depend upon anything that
8 has been brought out on cross-examination as well as any
9 inferences which flow from the testimony.

10 If the government fails to prove the defendant
11 guilty beyond a reasonable doubt, it is your obligation to
12 acquit him. The two views to present the position in the
13 case is called evidence, and evidence may be described in a
14 number of ways.

15 First, it can be divided into quantatively and
16 qualitatively. Qualitatively is the quality of the evidence, By
17 we mean credible evidence which is believable evidence.
18 quantatively we mean beyond a reasonable doubt in this kind
19 of a case, in a criminal case.

20 What do we mean by reasonable doubt? A reasonable
21 doubt means a doubt that is based upon reason and must be a
22 substantial rather than a speculative doubt.

23 It must be sufficient to cause a reasonably prudent
24 person to hesitate to act in the more important phase of his
25 life.

1 5 cmc

2 Evidence can also be divided in the following way:

3 Number one, testimonial evidence. That means that the witness
4 comes here and he describes to you under oath what he has
5 learned by the use of his senses. That includes anything,
6 as I said before, brought out on cross-examination, and in-
7 cludes any natural inferences that flow from that testimony.

8 It also includes exhibits, and there are a number
9 of exhibits in the case. The transcript is one, the drug
10 which was introduced is another, the transcript which is
11 agreed by the party to be a fair and accurate representation
12 of what appears on that tape that you heard twice already.
13 And matters of that kind.

14 It also includes any stipulations. The parties in
15 this case stipulated, for example, as I recall it that the
16 chemist was a qualified man and that his analysis was that this
17 was heroin hydrochloride, that it was approximately 57 plus
18 grams in weight and that it was 21.6 strength, percentagewise.

19 Now, that is a stipulated fact. Now, anything else
20 that was stipulated by the lawyers and the government is
21 a fact that you must consider. There need be no further proof
22 of it.

23 The last thing that evidence can be divided into
24 is what is called judicial notice. I take judicial notice
25 of many things during the course of a trial, not only this

Belt
18

1 6 cmcg

2 one, but other ones, because the law knows that there are
3 certain areas that are so well known that there is no need
4 for proof of that particular point.

5 One of the things I take judicial notice of in this
6 case for example is, that the locations which were described
7 during the course of the testimony in this case, mainly down
8 on the Bowery, and so forth, are in Manhattan, and that is
9 in the Southern District of New York and, therefore, you as
10 a juror of this district have a right to hear the case.

11 I also take judicial notice of the fact that heroin
12 is an illegal substance, there is no way that you can legally
13 possess or deal with or distribute or manufacture heroin in
14 the United States.

15 Now, another way of describing evidence is to
16 divide it into what is called direct and circumstantial
17 evidence. A defendant may be proven guilty by either direct
18 or circumstantial evidence, or a combination of both.

19 Direct evidence is the testimony of one who asserts
20 actual knowledge of the fact such as an eyewitness.

21 Circumstantial evidence is proof of a chain of
22 events indicating the guilt or the innocence of the defendant.
23 The law makes no distinction between the weight to be given
24 to either direct or circumstantial evidence. It only re-
25 quires that you after weighing all the evidence are convinced

1 7 mccc

2 of the guilt of the defendant beyond a reasonable doubt before
3 you can convict him.

4 Now, how does this apply to this case? Well, what
5 we are saying here is that these acts were done unlawfully,
6 knowingly and willfully. That must be established by the
7 government. These are mental operations. You can't see a
8 mental operation. The way to determine whether or not some-
9 thing has happened and what the person intended is that you
10 observe the totality of what you see, and then you make up
11 your mind, what did it prove to you.

12 Now, some people think that direct evidence is the
13 best evidence and, therefore, that is the only kind you
14 should listen to. Well, that is not entirely so. I can give
15 you a small example of that. For example, one time Joe Lewis
16 had fought Max Schmelling, and in the first fight he lost.

17 Now, there came a second fight which was here in
18 Madison Square Garden, and a little fellow had bought a
19 ticket, it cost \$100. A lot of money at that time. He
20 hustled into the place a little late. The two fighters were
21 in the ring. The referee had already felt their bellies, or
22 whatever he feels in the close confines when they talk there
23 in the middle of the ring.

24 He had instructed them and they were ready to start
25 the fight. They had taken their robes off. The little fellow

1 8 cmcg

2 started to go to a seat which was a good one right up in the
3 ringside, and it was about two or three rows back, and as he
4 walked along he couldn't see a thing, and he had seen the
5 two fighters in the middle of the ring and he heard the clang
6 of the bell indicating the round had started.

7 Next thing he knew a bunch of people jumped up in
8 front of him and he couldn't see anything. He finally jumped
9 up on the seat and he looked down there and there was
10 Schmelling flat on his back. Cold as a mackerel. Lewis was
11 being declared the victor by the traditional holding up of
12 his arm.

13 I remember Mayor Walker at the time said that at
14 that point in time Joe Lewis had laid a red rose on the tomb
15 of Lincoln. That was a marvelous way to describe this parti-
16 cular incident. But in any event, that little fellow, could
17 he say that he saw by direct evidence Lewis knock out
18 Schmelling? He didn't see the punch. He didn't see it land.
19 He didn't see Schmelling fall. He didn't see Lewis do any-
20 thing.

21 But do you think that he would be much amiss if
22 when he left the stadium that day to say, gee, I was at the
23 stadium that night and Joe Lewis knocked out Schmelling?
24 Why did he say that? Circumstantial evidence. That's why
25 he said it.

1 9 cmcg

2 Now, how much circumstantial evidence do you need
3 before you can prove the guilt or the innocence of someone?
4 "Because in this case circumstantial evidence really plays
5 two parts. One in the mental intention of these people, and
6 in Torres' case for example was there enough there of circumstan-
7 tial evidence to show that he was part of the conspiracy?

8 Well, I am reminded of a Roman father that once
9 tried to explain to his sons near the time when he was about
10 to go wherever the Romans went at the end of their life, and
11 he had him bring in some twigs. He had six or seven sons,
12 and then he took the twigs and put two of them together, and
13 as old as he was he simply broke them.

14 He said, give me another one, and he broke those.
15 He got six or seven and broke them very easily. Then he got
16 to the point where he couldn't break it any more.

17 The point which he was making to his sons were,
18 stick together and you will have no problem. The point I
19 make to you is this, it's like circumstantial evidence, a chain
20 of events, other factors have been proven. Have they got to
21 the point where you can't break them any more when you are
22 discussing a particular area in this case? If you find that
23 they haven't beyond a reasonable doubt, then of course the
24 rules are satisfied. If the twigs aren't enough, or if they
25 break too easily, then you haven't reached that point.

1 10 cmcg

2 That's a judgment you will have to make using your
3 own common sense which I will talk about a little later.

4 I have instructed you as to what the evidence is
5 up to this point. Now I will tell you what evidence is not.
6 Because many times it is important to know what is not evidence
7 in order to make a proper judgment.

8 The indictment in this case is not evidence. It
9 is merely evidence that the grand jury acted. The proof comes
10 here at the trial. So that anything that is in the paper
11 which you will have with you at the time that you discuss
12 this case, because the fore-person will be able to mark on
13 here how you vote on each one of these defendants and as to
14 each count, it will help you there.

15 But it won't help you so far as the facts are
16 concerned. The facts are from the witness stand and the
17 evidence as it is produced here.

18 Another thing I want you to reflect back now in
19 time because at that time I told you I was going to tell you
20 about it later on if it became necessary. Questions are not
21 evidence. What is in the question is not evidence unless it
22 is proven to you during the course of the trial. And I
23 remind you that, I told you at that time it's like the question
24 about asking the man, when did you stop beating your wife.
25 It doesn't prove that the man ever beat his wife at all.

11 cmcg

There is no proof of it at all. And some of these things that have been said here that questions contained answers which you have to analyze and make up your mind was there proof of that. A beautiful question, but was there proof of it? And you will make up your mind on that.

Now I may say that if there is anything that is not in evidence you may not speculate what is in there if you had been allowed to see it. You can't do that. You may not speculate. You can't guess at it. You must decide this case as you swore to on the evidence as you have heard it here in the courtroom, not on speculation, what might be or what might not be.

Any comments made by the court or by the lawyers during the course of the trial are not evidence, because it is very clear we weren't sworn, we didn't become witnesses in this case. Therefore anything we said is not evidence in the case.

Now, how do you evaluate the testimony, because that is the main function you have here. Evaluating the testimony. Where does the truth lie? What you believe. We don't have an IBM machine, we can't put in a card and say so and so is telling the truth and so and so isn't. So that we have to rely on things which Anglo-Saxon and Anglo-American juries have used for many years.

1 12 cmcg

2 First I will call your attention to the demeanor of
3 the witness on the witness stand. How did he impress you?
4 Did he answer questions in order or beg or borrow time so
5 that he could possibly in his own mind think some other way out
6 of it? Did his answers flow? Did they fit into this mosaic,
7 or this cross-word, or jigsaw puzzle that the lawyers were
8 talking about? Was there some evidence that you already
9 believed so that you know well know does this fit in there?

10 These are judgments for you to make, and if you use
11 your common sense in this area, use that same fine discern-
12 ment which you do in your every day life in matters of great
13 importance to you.

14 One important thing is to look into the interests
15 of the witnesses. What interest do they have? Well, of
16 course the defendants have an interest. I have described
17 before. It's a serious case. Serious both to the government
18 and to the defendants. The narcotics agent, Neives, or
19 Detective -- I guess he is a New York City detective, he is
20 employed, this is his job and so forth as had been described
21 by the lawyers, look into that, keep that in mind.

22 The chemist of course is a scientific man, and
23 actually I don't think anybody really, you know, contests
24 what he said. He simply said, Look, I took a look at this
25 thing that was in the Kool cigarette package and it's heroin.

1 12 cmcg

534

2 So that whatever witness you are determining, or whether you
3 are determining the weight of his testimony or what you want
4 to believe about him, keep in mind the interests that he has
5 a particular proceeding we have here.

6 If you find that any witness has falsely testified
7 as to any material facts in this case, you must disregard the
8 part which you think is false, which you know is false so far
9 as you are concerned. You may disregard his entire testimony.

10 It is something like I see some ladies on the jury
11 here, I will give you an example of how this rule works. If
12 you are making an omelet, say, with five or six eggs, and
13 unbeknownst to you you put a rotten egg in that omelet, nobody
14 eats that at your house because by the time it gets to the
15 table you can smell the reason why.

16 Or the other hand, if you burn a piece of toast and
17 it's not burned too badly, you can scrape the burnt part off
18 and then the husband eats the toast and the wife will take the
19 next piece. They don't throw it away.

20 Now, where the cooking is done by the male the
21 opposite is the result. He takes the good piece.

22 But, in any event, that is the way this rule works.
23 Now, in this case in evaluating the testimony, and this is the
24 reason I am bringing this up, Junior, or Carlos Santana, was
25 not called by either side. You will recall that I told you

1 13 cmcg

595

2 that both sides requested his presence in court, that he
3 declined to testify because he availed himself of fifth
4 amendment rights.

5 Under this circumstance I tell you as a matter of
6 law that you cannot speculate one way or the other upon what
7 his testimony would have been had he gotten on the stand and
8 testified. So keep that in mind when you consider the evi-
9 dence in this case.

10 I now come to the definition which are involved in
11 this paper called the indictment. There are a number of things
12 here which I have to describe for you so that you can make a
13 proper use of it.

14 Congress has seen fit to make criminal conspiracy,
15 because they feel, and they have indicated in passing the
16 law that when people join together to commit a crime there is
17 probably a greater danger than when they are committing crime
18 alone. Therefore conspiracy is a crime under the law and
19 Congress has so indicated.

20 Now, what is a conspiracy? Well, the Latin
21 derivation of the word, which is you say it in Latin sounds
22 conspirari, which means breathes together; indicates the
23 element that is involved.

24 It's a case where you sort of get together and in
25 secret make some sort of an agreement. Now, a conspiracy is

1 14 cmcg

2 an agreement between two or more persons or parties to violate
3 a federal law in the context of our case and thereafter one
4 of the conspirators commits an act in furtherance of the
5 agreement. So that if you are satisfied beyond a reasonable
6 doubt that there was an agreement between two or more parties
7 to violate the federal narcotics control law and that there-
8 after an overt act was committed by one of the conspirators
9 in furtherance of their agreement, the conspiracy would be
10 complete as to anyone who joined in the agreement unlawfully
11 knowingly and willfully.

12 So that in order for there to be a conspiracy there
13 must be an agreement, it must be for the purpose of violating
14 the federal law in this case, and then there must be an act
15 done in furtherance of it.

16 Now, the indictment uses a number of words, combined
17 conspired, confederated, and agreed. These words generally
18 taken together mean there was an agreement.

19 Now, another definition is of the overt act. This
20 is another Norman French word. It is the opposite of covert,
21 which means hidden. Overt means open. And an open act which
22 is required to be part of the conspiracy proof need not be
23 an illegal act. It can be a perfectly legal act.

24 If I conspire with my law clerk to go and rob a
25 bank and I say to him, q.e, you go get your car, I will go

1 15 cmcg

2 buy a flashlight and I will meet you at the National City Bank
3 at 11 o'clock tonight. As soon as I go in the five and ten
4 and by that flashlight I have committed the overt act necessary
5 to complete the conspiracy, and it is a legal act. Anybody
6 can buy a flashlight in the five and ten, there is nothing
7 wrong about it.

8 So that the overt act need not be illegal. And the
9 government, however, must prove one of the pleaded overt acts,
10 and there are six of them here. I am not going to bother to
11 recite them because I am going to give you the indictment
12 anyhow.

13 But the government need to prove only one of those,
14 it doesn't need to prove all six of them. One is sufficient,
15 provided it is done in furtherance of the conspiracy.

16 The controlled substance which we are talking
17 about here, I told you before was heroin, and that I have
18 already indicated to you is part of the schedule. Then the
19 expressions in the indictment talk of, these actions were
20 done unlawfully, intentionally and knowingly, and those
21 expressions, unlawfully means in the context of our case,
22 against the federal law. Now, the defendant doesn't have to
23 know the particular section. You now know that I have said
24 to you that it is 841 and 846, I think, but that's immaterial.

25 It is the actions which are controlling, and if they

1 16 cmcg

2 violate that particular section and they know they are doing
3 acts which do violate the federal section, then that would be
4 an unlawful act.

5 Now, knowingly means that the act is committed
6 voluntarily and purposely and not because of mistake or acci-
7 dent. Since this is a mental process it may be proven by the
8 defendant's conduct and by an examination of all the facts
9 and circumstances surrounding this case.

10 Now, the addition of intentional to this means that
11 in addition to it being voluntarily done and freely done, it
12 must be done with a bad motive.

13 The Romans called this the mens rea, the evil intent,
14 the bad motive. You can't violate a law by what I will
15 describe when I was a kid, they used to use this term, I
16 don't know if it's still available, moper. Moper does not
17 equal willfulness. There must be something more than that.
18 There must be a bad motive on your part.

19 Well, to distribute because one of the indictments,
20 both of them talk about the distribution, as it is used in
21 the statute. That simply means to transfer to another. There
22 doesn't even have to be consideration for a sale or anything
23 else.

24 In this case, of course, the allegation is that
25 there was a sale, and I think that the facts indicate that

1 17 cmcg

2 though it's your thought not mine you will have to find that
3 this was in fact a sale, and if it was a sale, then it would
4 be a distribution.

5 But any transfer of the drug would be a distribution
6 within the context of this statute.

7 Now, the crime charged in this case requires proof
8 of specific intent, and to establish specific intent the
9 government must prove that the defendant knowingly did an
10 act which the law forbids purposely intending to violate the
11 law.

12 Such an intent may be determined from all the facts
13 and circumstances in the case.

14 Now, it is important that you do not confuse in
15 this case the concept of intent with motivation or motive.
16 Motive is what prompts a person to act. Intent refers only
17 to the state of mind with which the act is done.

18 Laudable motive may prompt one person to voluntarily
19 do acts good and another to voluntarily do criminal acts.
20 Good motive alone is never a defense where the act done is a
21 crime.

22 The motive of the defendant is immaterial except in-
23 sofar as evidence of motive may aid you in determining the
24 state of mind or intent. Because in the last analysis if you
25 say that because you have a good motive to help your brother-

1 18 mccc

2 in-law, or whoever, or the boyfriend of your -- the brother
3 of your girl friend as Anglada claims in this case then it
4 wouldn't justify any crime because the good motive being you
5 want to help your intended brother-in-law or whatever his
6 position was, at the time.

7 But before you get to that, however, you have to
8 determine the surrounding facts. What was the relationship
9 between them? Were they really that close? Remember the
10 testimony in that area. Look into that and find out, number
11 one, was this his motive. And then even if it was his motive,
12 that is not a legal excuse for committing a crime if in fact
13 it was committed. So that you will have to look into this
14 area of the case and explore it very carefully.

15 Now we get down to the indictment. The first
16 count is contained in the first two pages as I have indicated
17 to you by showing it to you, and that is the conspiracy count.

18 I have already told you that a conspiracy is a
19 combination of two or more persons to accomplish an unlawful
20 purpose or a lawful purpose by unlawful means. While it
21 involves an agreement it is not necessary that the persons
22 charged met together and entered into an express or formal
23 agreement or that they reduced their agreement to writing
24 describing how the scheme was to be effectuated.

25 It is sufficient to show that they tacitly came

1 19 cmcg

2 together and had a mutual understanding to accomplish the
3 unlawful purpose to violate the federal narcotics law.

4 Such an agreement may be inferred from the circumstances and
5 the conduct of the parties since ordinarily a conspiracy is
6 characterized by secrecy.

7 In determining whether the evidence establishes the
8 existence of the conspiracy and the defendants' participation
9 in it, you should consider the actions and declarations of
10 all alleged participants.

11 To be a member of the conspiracy the defendant need
12 not know all the other members, nor all the details of the
13 conspiracy, nor the means by which the objects were to be
14 accomplished.

15 Each member of the conspiracy may perform separate
16 and distinct acts. It is necessary, however, that the govern-
17 ment prove beyond a reasonable doubt by credible evidence
18 that the defendant you are considering was aware of the
19 common purpose and had the intent to advance it and that he
20 was a willful participant.

21 The extent of the defendants' participation is not
22 determinative of his guilt or innocence. Mere presence at the
23 scene of the transaction and knowledge that a crime is being
24 committed or mere association with persons engaged in a
25 criminal enterprise is not sufficient to establish that any

1 20 cmcg

2 defendant is guilty of the commission of the crime charged
3 unless you find beyond a reasonable doubt that the particular
4 defendant was in fact a participant and not merely a knowing
5 spectator.

6 If a defendant participated with knowledge of some
7 of the purposes of the conspiracy with an intent to aid in
8 the accomplishment of the unlawful and hopes to make it suc-
9 ceed, and you are convinced of that fact beyond a reasonable
10 doubt, then he would be guilty of the crime of conspiracy.

11 These same observations are also true when we come
12 to the second count which I will describe to you in a few
13 minutes. Remember, in order to hold a man for joining others
14 in a conspiracy he must in some sense promote the venture
15 himself, make it his own and hope that it will succeed.

21 16 A defendant may be convicted as a conspirator even
17 though he plays a minor part in the conspiracy. His financial
18 stake if any in the venture is a factor to be considered in
19 determining whether a conspiracy existed and whether defendant
20 was a member of it.

21 If it is established beyond a reasonable doubt that
22 a conspiracy did exist and that the defendant was one of its
23 members, then the acts and declarations of any other member of
24 the conspiracy in or out of his presence done in furtherance
25 of the objects of the conspiracy and during its existence may

1 21 cmcg

2 be considered as evidence against the particular defendant
3 you are considering.

4 When men enter into an unlawful purpose they become
5 partners in crime and agents for one another. However,
6 statements of any conspirator which are not in furtherance
7 of the conspiracy, or were made before its existence or after
8 termination may be considered as evidence only against the
9 person making them. A defendant must intend to be a member,
10 but do not mistake motive from intention.

11 In considering Anglada's testimony, for example,
12 the fact that what motivated him was to assist Junior is not
13 a legal excuse or justification for taking part in a narcotics
14 transaction. The motive does not legalize illegal conduct.
15 Before a conspiracy comes into being there must be an overt
16 act. One overt act is sufficient. So that that generally is
17 the law of conspiracy, and we will go through the indictment
18 to show you how it applies.

19 Now it starts off here, on or about the first day
20 of September until the filing of the indictment, and the
21 indictment was filed on January 16, 1975, the acts must be
22 committed within that time, it doesn't have to go from the
23 1st of September all the way through January, but it must
24 happen within that time, and here of course the testimony
25 is September 3rd, September 5th, September 6th, and they are

1 22 cmcg

2 all within this time period.

3 Then it says the defendants, Shaw, Torres, and
4 Anglada unlawfully, intentionally and knowingly -- and I
5 described to you what that means, they must do it with an
6 unlawful and; with an illegal intent, namely to violate the
7 federal law, it must be voluntarily and not through mistake
8 or inadvertence, and it must be with a bad motive, bad inten-
9 tion -- conspired, combined, confederated and agreed to
10 violate certain sections of the law which I read to you at
11 the beginning if you recall.

12 Then the second part says the means by which they
13 were going to do this was to distribute or possess with the
14 intent to distribute.

15 Then the last thing we have is the six overt acts,
16 and you will look at those and see whether the Government
17 has proved them, or any one of them.

18 Now, if the Government has proven these elements
19 to your satisfaction by credible evidence beyond a reasonable
20 doubt, it is your obligation to convict the defendant.

21 On the other hand, if the Government has failed to
22 prove any one or more or all of these elements, then you must
23 acquit the defendant.

24 Now, the second count reads, these are the elements
25 that you must find in the second count, and, by the way, you

1 23 cmcg
2 consider each defendant separately on the first count and you
3 will do the same thing on the second count, on or about the
4 6th day of September, 1974, well, you have heard the testi-
5 mony on that, the incident that is alleged to have happened
6 in the car on September 6th, in the Southern District of New
7 York, and I have already told you I take judicial notice that
8 this is the Southern District of New York, the defendants,
9 Shaw, Torres and Anglada unlawfully, willfully and knowingly
10 did distribute and possess with intent to distribute. Here,
11 of course, the Government's proof as far as they are concerned,
12 the allegations are concerned, and what their witnesses have
13 testified to, is that there was in fact a distribution.
14 And possession with intent to distribute is also mentioned in
15 there.

16 The Government doesn't have to prove both. Either
17 one of them is sufficient. Actual possession means when you
18 physically have something over which you can exercise dominion.
19 Constructive possession means when you have the power to
20 order something to happen. For example, if I told my law
21 clerk to go up and get a book which I have upstairs which is
22 my own private book, even though it is not physically here
23 before me I have constructive possession of it because I have
24 the power to order him to do it, and he would go up and get
25 it and simply bring it down. If anyone can exercise dominion

1 24 cmcg

2 over anything they have constructive possession of it.

3 Then they are talking about a schedule 1 narcotic
4 drug, and that, of course, is the heroin we were talking
5 about. Now, if the Government has proven all of these
6 elements, by credible evidence beyond a reasonable doubt,
7 you should convict the defendant of this particular count and
8 discuss each defendant separately.

9 If you find, on the other hand, that the Government
10 has failed to prove any one or more or all of the elements
11 of this particular count, then of course it is your obliga-
12 tion, you must acquit the particular defendant you are
13 discussing.

14 The same rules which apply to conspiracy law, namely
15 being partners in crime, and so forth, apply to this because
16 this charges acting in concert, and when you act in concert
17 together with someone else the same rules apply as apply in
18 a conspiracy charge. Therefore, you will remember those
19 rules that apply to this count.

20 Sympathy and bias play no part in this case, and
21 they should not enter into your judgment because that is the
22 oath you took. Punishment is the concern of the Court, it is
23 no concern of yours.

24 Your verdict must be unanimous in this case. All
25 12 of you must agree. You may not record the verdict, Madam

1 25 cmeq
2 Foreperson, you may not report a verdict unless all 12 agree.
3 When you get this paper it will guide you. Along the side
4 here you have Shaw, Torres and Anglada, and you make a note
5 as to each one, guilty or not guilty on count 1. All 12 of
6 you must agree.

7 Then you do the same thing with the second count.
8 And you put on there so that when you come back into court
9 the clerk of the court will ask you, have you agreed upon a
10 verdict, and then you will report whatever verdict you find.

11 Now, up to this point I remember having a jury go out
12 once and they went out for about 6 hours on a Friday afternoon,
13 and there was never a peep from them. Finally I called them
14 in and asked, what's going on? And they said, Judge, you
15 kept telling us don't discuss this case, and we were just
16 sitting in there. Please don't do that today, even though it
17 isn't Friday. Discuss this case. Come to a judgment in
18 accordance with your own feelings in the matter, your own
19 conscience, and come in with a verdict which you think is a
20 fair and proper one, and that is all the parties have asked
21 of you, that is all I ask of you.

22 22 If there any question about the testimony we can
23 always have it read to you if you want it read, so just let
24 us know. But if there is any communications from the jury
25 the forelady will do the communicating on a piece of paper

1 26 cmcg

2 which she will then put in an envelope and give to the marshall
3 who will give it to me.

4 Now, I have one last time that I talk to the lawyers
5 before I conclude with you, and if you will excuse me I will
6 do that now.;

7 (At the side bar.)

8 THE COURT: We might as well start with the order
9 of the indictment, Mr. Taikeff.

10 MR. TAIKEFF: Mr. Blackett I think is first.

11 THE COURT: All right. Are there any exceptions?

12 MR. BLACKETT: No exceptions.

13 THE COURT: All right. How about Mr. Anglada?

14 MR. TAIKEFF: I think Mr. Torres is second.

15 MR. HOLTZMAN: There is one point Mr. Taikeff was
16 mentioning to me, and I urge your Honor to make clear to the
17 jury that if they believe that there was some agreement or
18 understanding between my client, Torres, the agent and Junior,
19 that doesn't make the conspiracy charged in the indictment
20 that's not the conspiracy charged. What I am suggesting is
21 that they may believe the Government has shown some kind of
22 conspiracy between the agent, Junior and my client, and that
23 couldn't be the basis for a conviction.

24 Am I making myself clear, your Honor?

25 THE COURT: I know what you are saying. You are

1 27 cmcg

2 saying that if the jury believes that the only dealing that
3 he had was on the first day, and from that day on he dis-
4 associated himself from it, then they couldn't find him
5 guilty of this conspiracy on this substantive charge.

6 MR. HOLTZMAN: I am specifically --

7 MR. TAIKEFF: That's right.

8 THE COURT: That's exactly what you wanted to say.
9 All right. Anything else?

10 MR. HOLTZMAN: Yes. On circumstantial evidence
11 I know your Honor has charged the ruling, and I would respect-
12 fully except, and ask you to charge the moral certainty of
13 hypothesis and --

14 THE COURT: All right, you go up and argue with
15 Judge Mansfield on that.

16 MR. HOLTZMAN: Your Honor, also, and I think we made
17 this point before, but I make it again, because we have asked
18 that with respect to Junior that your Honor instruct the
19 jurors that the Government has the ability to make a request
20 for immunity --.

21 THE COURT: I decline.

22 MR. HOLTZMAN: The other point is your Honor in-
23 dicated that with respect to aiding and abetting the same
24 principals apply as they do with respect to conspiracy. Your
25 Honor gave the charge with respect to conspiracy. I would

1 28 cmcg

2 only ask your Honor, may we, because it's not something that
3 these jurors are accustomed to, to just go over that point
4 with them with respect to aiding and abetting? In other
5 words, re-emphasize what you said with respect to conspiracy.

6 THE COURT: I decline to do that.

7 MR. HOLTZMAN: The only other point I make, your
8 Honor, is to the extent that your charge is not in haec
9 verba, and I don't mean to be presumptuous with my request,
10 I take exception.

11 THE COURT: All right.

12 MR. TAIKEFF: Your Honor, I respectfully except to
13 your Honor's charge in the following respect: The first
14 point I make does not concern that part of the charge which
15 occurred after the door was locked. Sometime prior to that
16 he again reiterated some certain information concerning the
17 grand jury's consideration in finding -- in the one I ha
18 previously objected to, and --

19 THE COURT: Well, the objection is noted.

20 MR. HOLTZMAN: I join in that, your Honor.

21 MR. TAIKEFF: As to the charge itself, your Honor,
22 I except as follows: Your Honor suggested to the jury that
23 if it were not for their presence that you would decide this
24 case. This coupled with your Honor's observation that per-
25 haps Mr. Virella ought not to sum up, I think too strongly

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transmits to the jury what your Honor has already transmitted,
and of course counsel expect to have some opinion at the end
of the case because the Court pays attention to the case, but
it is not, and I say this most respectfully appropriate for
the Court to transmit to the jury --

THE COURT: Well, you have noted that.

MR. HOLTZMAN: Your Honor, I wish to join in that
as well.

THE COURT: You can join in all of his objections.

MR. TAIKEFF: Your Honor, I followed the charge.
You didn't purport to outline the testimony, your Honor said
that because it was a short case your Honor would not outline
the testimony, and in doing so your Honor completely eliminated,
or failed to make any reference to Anglada's testimony concern-
ing the conversation that he had with Junior, and for that
oversight I respectfully except.

THE COURT: All right.

MR. TAIKEFF: At a point where your Honor was
defining the word illegal to the jury as it appears in the
indictment, your Honor told the jury everyone -- you went on
to say that it's something that you can't--

THE COURT: That is taken right out of the section
of the statute.

MR. TAIKEFF: I understand that, your Honor. My

1 30 cmcg

2 point was that the way your Honor stated it was legally un-
3 acceptable to me for two reasons. First of all, it's not an
4 issue in the case. We never raised that issue. Whenever
5 raised that defense, that it had been obtained legally and
6 could be distributed. We never read the statute that way.

7 Secondly, the language which your Honor chose to
8 elaborate on that point virtually told the jury that you
9 cannot under any circumstances touch heroin and have any
10 defense to a charge --

11 THE COURT: That is absolutely true, except on a
12 context here where there is lack of mental capacity, but out-
13 side of that it's exactly true. That is exactly what the
14 statute says. Go ahead.

15 MR. TAIKEFF: It doesn't recognize, your Honor, the
16 proper and legal findings of the jury.

17 THE COURT: Go ahead. You made your point.

18 MR. TAIKEFF: Next point that I respectfully except
19 to occurred in that part of your Honor's charge where you
20 discussed the possibility of Torres' involvement or lack of
21 involvement and use these words -- I will tell your Honor
22 what I am quoting -- the question is whether or not Torres
23 was "A part of this conspiracy."

24 I except to the quoted material because it virtually
25 suggests to the jury that there was in existence a conspiracy

1 31 cmcg

553

2 when in fact a principal function under count one is to first
3 determine whether or not there was in fact a conspiracy.
4 Whether or not any of --

5 THE COURT: All right.

6 MR. TAIKEFF: I respectfully except to your Honor's
7 example or examples given to the jury on how to determine
8 credibility as being rather than a general description of some
9 of the things which one looks for, a specific description of
10 Mr. Anglada's conduct on the stand. A further hint to the jury
11 as to how your Honor feels about Mr. Anglada's testimony and
12 his guilt or innocence.

13 Finally, your Honor, I respectfully except from your
14 Honor's comments about motive, both in the principal part of
15 the charge where you discussed motive generally, and your
16 reiteration of certain aspects of that charge, in that that
23 17 part of the charge would discuss conspiracy more than generally.

18 THE COURT: No further exceptions?

19 MR. HOLTZMAN: I see one further thing I failed to
20 mentioned. That was your Honor's example about the twigs.
21 I didn't understand it so therefore I will except to it.

22 THE COURT: All right.

23 (In open court.)

24 THE COURT: In relation to Torres, if you find in
25 his case that after the first meeting there was no further

1 32 cmcg

2 activity on his part whatsoever that in any way connected him
3 with this alleged conspiracy, and every time I use the word
4 "conspiracy" I don't mean to say to you that I feel a con-
5 spiracy has been proven, it is an alleged conspiracy, and that
6 goes to all my remarks, but if you find that it is the fact
7 that the only thing that happened was that he met with Nièves
8 on the first occasion and then there was no deal and he had
9 nothing to do with the conspiracy from that point on, then
10 you would have to acquit him. You can only find him guilty
11 if in fact you believe that he is part of the conspiracy
12 charged in this indictment.

13 All right. Mr. Ritter, I want to thank you for
14 your service at this point, however, we are not going to
15 deprive you of whatever you ordered for lunch, but you will
16 eat it in a different place. The jury may retire and deli-
17 berate.

18 I assume there is no objection to the jury having
19 the exhibits that are in the case.

20 MR. HOLTZMAN: No, your Honor.

21 THE COURT: And the clerk of the court can deliver
22 them without me coming down?

23 MR. HOLTZMAN: Yes, your Honor.

24 MR. TAIKEFF: Could we, after the jury goes out,
25 speak to the court a moment.

1 33 cmcg

2 THE COURT: Yes.

3 (Jury retires to deliberate.)

4 (In open court - jury present.)

5 THE COURT: The Court notes the presence of the
6 defendants, their attorneys, the government and the jury.

7 I received a communication from the jury, the first
8 of which reads as follows: "May we have the indictment?"

9 The clerk of the court is directed to give the forelady the
10 indictment.

11 "May we have the exhibits to review again?"

12 The clerk of the court is directed to turn over the
13 exhibits.

14 Then the last one is, "May we have the written
15 definitions of the two charges to clear some points raise."

16 In reference to this, while I used some notes to
17 make my remarks to you, those were simply notes and they are
18 not in any written form to which I can give them to you.
19 If there is any particular definition you are concerned with
20 I can define it for you.

21 If you would give me the indictment, Mr. Clerk, in
22 reference to the first count, I went over this before, you
23 will recall, with you. Before you can convict a defendant
24 you must find all these facts by credible evidence beyond a
25 reasonable doubt.

2 On or about the first day of September to the filing
3 of the indictment, which is January 16, it must be within that
4 period, it doesn't have to cover the whole period; is that
5 clear? In the Southern District of New York. I told you
6 that I took judicial notice that this is the Southern District
7 of New York. Nonetheless, you must find that before you
8 act on this case.

9 The defendants, Shaw, Torres and Anglada, unlawfully,
10 intentionally and knowingly. Now, I have defined those terms
11 for you. Unlawfully means against the federal law. Inten-
12 tionally means voluntarily with an understanding of what you
13 are doing, not through mistake, inadvertence or in error.
14 Knowingly means to do something voluntarily with an under-
15 standing of what you are doing and doing it not through mis-
16 take or error.

17 The reason intention is in there also is because
18 that gives a wider context of the idea that the man must know
19 that he is doing something illegal.

20 Do you understand that now? So the combination of
21 those words must mean he must do it against the federal law
22 in this case, voluntarily not through mistake or error, and
23 he must do it with evil intent.

24 Combined, conspired, confederated, and agreed.
25 That essentially means there was an agreement which they were

1 35 cmcg

2 acting on. It doesn't necessarily have to be a written agree-
3 ment. It could be an oral agreement, and you would have to
4 ascertain that from the facts, all the evidence in the case.

5 To violate sections 841 and other numbered sections,
6 that is the section which says that you may not distribute or
7 possess with intent to distribte. To distribute means any
8 exchange between two persons, including a sale. In this case,
9 of course, the claim of the government is that there was an
10 actual sale. So that's what is meant by distribution.

11 Then the second paragraph here which you will see
12 there is the means by which they were going to fulfill this
13 agreement, and that was to distribute and possess with intent
14 to distribute, that is the means they were using.

15 Now, it doesn't have to succeed. In this conspiracy
16 count here if there had never been a sale or anything else,
17 if you find there was an agreement and that something was done
18 in furtherance of that agreement, that would be the conspiracy,
19 and anybody in it at that time would be guilty of the
20 crime provided he acted unlawfully, knowingly and intention-
21 ally.

22 In order to complete the conspiracy you must also
23 have an overt act so any one of the six acts, if anyone of the
24 six acts is proven, that would be sufficient. If none of them
25 are proven, none of them at all, then of course you would have

36 cmcg

to acquit on this conspiracy count.

Now, you make that determination as to each defendant individually.

Now, does that cover your question as far as the first part of it is concerned, count one? Is there any other definition or term you want explained in count one?

All right. Now, the second count is what is called the substantive crime, because it violates the substance of the federal law. It's apart from the conspiracy, and the government contends here that there was an actual distribution in violation of the law. In order to do that you must find these elements, it must have happened on or about the 6th of September, 1974, and I don't think that anybody disputes that something happened on September 6, 1974.

The second thing is that it had to happen in the Southern District of New York in the areas involved here where we have taken judicial notice are a part of the Southern District of New York.

Next is that the defendants, Shaw, Torres and Anglada unlawfully, willfully and knowingly, and here again that is the same definition, against the law, freely and voluntarily, and with intent to violate the law, You see, the only reason we are responsible for our acts at all is that we have will power. If we didn't possess will power then

1 37 cmcg

2 nobody could be charged with anything, because you really are
3 not violating anything. But when you have will power and
4 you exercise that will power you are responsible for your
5 conduct. That is essentially what is involved. Did distribute.
6 Well, distribute includes a sale or any transfer from one per-
7 son to another. One, Shaw handed that over to Nieves and put
8 it on the seat alongside of him. If you find that to be the
9 fact -- I am not suggesting that I am making that finding,
24 10 you have to make that finding -- that would be a distribution.

11 And if he met Anglada, as Anglada testified he did,
12 and they had an agreement between themselves, which it is
13 up to you find, I am not suggesting what you do here, you
14 have heard the witnesses themselves testify, Anglada I am
15 sure, that if they went up there and left that locality with
16 the package with the intention of delivering it to Nieves,
17 they would have had possession of that with intention to
18 distribute.

19 That's what they were going up there for. They
20 were going to transfer over to the other fellow for \$1600.
21 Of course, these findings you will have to make, I am not
22 making the findings, you would have to determine it from the
23 evidence.

24 Lastly, that it is a controlled substance, and the
25 chemist testified that it was, it was heroin.

1 38 cmcg

2 Now, any other definition? Does that cover every-
3 thing.

4 JUROR NO. 5: You probably have covered it, but there
5 is one question. On the second count, under the ruberick of
6 sale, if a person --

7 THE COURT: No, the ruberick is not sale, the
8 ruberick is distribution.

9 JUROR NO. 5: Is distribution which may or may not
10 involve money; is that correct?

11 THE COURT: Oh, yes. No money need be involved at
12 all. Even if a nickel wasn't passed that would be a distri-
13 bution. But a sale is a distribution also if in fact you
14 find it. I am not suggesting what you find here, but this is
15 for you to find.

16 JUROR NO. 5: But the broader term is distribution,
17 and may or may not involve the exchange of money?

18 THE COURT: That's right.

19 JUROR NO. 5: Thank you.

20 THE COURT: Are there any other questions? All
21 right then, suppose you retire and you have the exhibits and
22 the indictment.

23 (Jury leaves to continue deliberations.)

24 (Note from jury marked Court's Exhibit 4 for iden-
25 tification.)

XXX

1 39 cmcg

2 (In open court.)

3 THE COURT: The court has a note from the jury.

4 "The jury has reached a verdict."

5 This will be marked as a Court exhibit.

XXX 6 (Court Exhibit number 5 marked for identification.)

7 MR. TAIKEFF: Your Honor, before the jury comes in
8 I just want to make sure I don't overlook noting my respectful
9 exception to your Honor's instructions, the last time the
10 jury was in. In response to their note.

11 THE COURT: Well, everything was put on the record.

12 MR. TAIKEFF: I don't think counsel had a chance
13 to state whether or not they excepted, and although it repeated
14 your Honor's earlier charge, I think the earlier exceptions
15 will apply. I just want to make sure that all the I's are
16 dotted.

17 THE COURT: You can have all the exceptions you want
18 as far as I am concerned.

19 MR. TAIKEFF: I understand.

20 (Jury enters the courtroom.)

21 THE CLERK: Will the jurors please answer present
22 as your name is called.

23 (Jury was noted present.)

24 THE CLERK: Madam Forelady, has the jury agreed
25 upon a verdict?

1 40 cmcg

2 THE FORELADY: Yes, we have.

3 THE CLERK: How do you find the defendant Shaw on
4 count one?

5 THE FORELADY: Guilty.

6 THE CLERK: On count two?

7 THE FORELADY: Guilty.

8 THE CLERK: How do you find defendant Torres on
9 count one?

10 THE FORELADY: Not guilty.

11 THE CLERK: On count two?

12 THE FORELADY: Not guilty.

13 THE CLERK: How do you find defendant Anglada on
14 count one?

15 THE FORELADY: Guilty.

16 THE CLERK: On count two?

17 THE FORELADY: Guilty.

18 THE COURT: Harken unto your verdict as you have
19 just announced it. When you hear your name please tell the
20 clerk of the court whether this is your verdict, namely that
21 as to the defendant Shaw you find him guilty on both counts,
22 as to defendant Torres you find him not guilty on both counts,
23 as to defendant Anglada you find him guilty on both counts.

24 If that is your verdict, please answer yes.

25 If it is not, answer no.

GEORGE STEW, EDWARD TORRES
and RICHARD ANGLADE

MEMORANDUM

CABRERA, D.J.:

In amplification of the record of this trial, so as to assist a future reviewing court (if an appeal is later taken), the following thoughts are offered with respect to the events of March 25, 1975 concerning the witness Carlos Santana:

Under neither 18 U.S.C. §§6002-6003 nor the prior law "is anyone other than the United States Attorney. . . authorized to request an order granting immunity to a witness. While the Congress may have the power to grant [defendants] a right comparable to the right granted to the government, the judicial creation of such a right is beyond the power of the courts." United States v. Allstate Mortgage Corp., 507 F. 2d 492, 495 (7 Cir. 1974) (and the cases cited therein at pp. 494-95). Similarly, the district court is without authority to grant immunity *sua sponte*. Morrison v. United States, 365 F. 2d 521, 524 (D.C. Cir. 1966) (per Burger, J.).

In addition, a defendant has no constitutional right to have immunity conferred upon a defense witness who exercises his privilege against self-incrimination. Allstate, *supra*, 507 F.2d at 495 (and the cases there cited).

The witness, Santana, having exercised his Fifth Amendment privilege upon the advice of counsel and the Court having found such right to be available to him and not subject to a prior effective waiver, concludes that Santana could not be compelled to answer any questions herein absent the application of the government for immunity in his behalf and the entry of a order under §§6002-6003. Such is not the case here, as the government has not so applied.

Finally, the giving of a "missing witness" charge is not appropriate in these circumstances, as the government's reluctance to seek immunity for the witness "cannot reasonably be equated to the failure of a litigant to produce an other-

wise available witness." Morrison, supra, 365 F.2d at 524.
As the present Chief Justice pointed out in Morrison:

Where a Fifth Amendment testimonial claim has been invoked by a witness and granted, the Government's refusal to grant him immunity in order to permit him to testify does not give rise to a missing witness instruction.

Id. Cf., Bowles v. United States, 439 F.2d 536, 541-42 (D.C. Cir. 1970), cert. denied, 401 U.S. 995 (1971).

The Clerk of the Court is hereby directed to make this Memorandum a part of the files and records of this case.

It is SO ORDERED.

Dated: New York, N.Y.
March 26, 1975

U.S.D.J.

UNITED STATES OF AMERICA

-v-

75 Cr. 43

GEORGE SHAW, EDWARD TORRES
and RICHARD ANGLADA

MEMORANDUM

CANNELLA, D.J.:

With regard to our exclusion of the statement of George Shaw which was electronically recorded by Mr. Taikeff and offered into evidence on behalf of both defendants Anglada and Torres (on March 25, 1975), we note that such statement is properly found to be not admissible under the declaration against penal interest exception to the hearsay rule. This was made abundantly clear by Judge Timbers in United States v. Marquez, 462 F.2d 893, 894-95 (2 Cir. 1972). Similarly, such statement is not admissible under the admissions exception both upon reliability grounds and because it is not being offered against Shaw, but rather for Anglada and Torres. 4 Wigmore on Evidence §1048 (Chadbourn rev. 1972); McCormick on Evidence §262 (2 ed. Cleary 1972).

The Clerk of the Court is directed to incorporate this Memorandum into the files and records of this case.

It is SO ORDERED.

Dated: New York, N.Y.
March 26, 1975

U.S.D.J.

Telephone Conversation Between Elliot A. Talkoff, Esq.
and George Shaw at 4:30 p.m. on November 27, 1974.

George: Hello.

Elliot: George?

George: Yeah.

Elliot: Hello.

George: Yeah.

Elliot: Am I speaking to George?

George: Yeah.

Elliot: You know who I am?

George: Yeah, this is Richie's lawyer.

Elliot: Okay. It is very important that I learn some information from you because I need that information in order to assist Richard. It has nothing to do with your, with your situation whatsoever. So, I have I have no particular interest in you individually. I am only interested in information which you can give me concerning him, okay? You understand?

George: Yeah.

Elliot: Now, according to the complaint, which was filed in Richard's case, you and Richard and this undercover cop and a kid whose name is Junior...

George: Yeah.

Elliot: ...that's Richard's girlfriend's brother, were all in the car together at the time the sale went down.

George: Yeah.

Elliot: Okay. Now there are two things that I am especially interested in. When the undercover guy counted out the money, how much did he count out?

George: He gave me half and he gave Richie half.

Elliot: How did that happen? Why did he split up the money between the two of you?

George: Well uh, I don't know, I don't really know, but uh, he just did that, did it that way because I gave him the package and Richard was sitting up front with him.

Elliot: Well, did anyone ask him to do it that way?

George: No. Not that I remember because it was quite a while ago. It happened so fast like, you know what I mean?

Elliot: Who said what the price was going to be?

George: I don't know. I don't even remember that. I think it was Richie.

Elliot: Had you told Richie how much it was?

George: Yeah. I told him before.

Elliot: Well who was the person who decided what the price would be?
Not _____

George: Oh I did then.

Elliot: You decided it would be \$1,600.00?

George: Uh huh.

Elliot: Did you ever tell Richie or the cop or the guy who was pre ending to be the buyer, but we now know to be a cop, did you ever, did you ever tell him to give the money to Richie instead of to you?

George: Uh, oh it went like this: I didn't even know these people so I didn't, I wasn't saying much, you know what I mean?

Elliot: Uh huh.

George: And I was introduced to these people and they - I went in the car with Richie. Richie knew these people so I was sitting in the back, a guy weighed it, you know, um, took a couple of blows out of it and um ...

Elliot: He took a couple of blows out of it?

George: Yeah.

Elliot: The undercover guy did?

George: Yeah.

Elliot: Right there in the car?

George: Yeah. I remember because, uh, Richie gave him the keys, his keys to do it.

Elliot: You mean he used the keys as a spoon?

George: Yeah, and, uh, I didn't really say much because I didn't even know the people but uh, I remember that that he counted it to Richie eight and then he had like a metal thing in his feet and he counted eight more and I took it.

Elliot: Well what did you think about Richie ending up with half the money at that time?

George: Well, like I know him so you know what I mean - it ain't - you know not him that I worried about.

Elliot: You know him from the neighborhood?

George: Yeah.

Elliot: Well you weren't - he wasn't supposed to walk away with the money was he?

George: I don't know. Like it, it seemed so you know, like, I guess so because we did walk away with the money and nothing ever happened ever since. You know what I mean?

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|2/ A58

Elliot: And then what did Richie do with the money, he gave it to you?

George: He gave it to me.

Elliot: Was, was there at the time the money was being given out and just before you got out of the car, any incident involving a siren of any kind?

George: Well, well we seen, we heard a siren and we see like a, I don't know, they seemed nervous, that's one thing I remember.

Elliot: Who's they?

George: That, the kid, Junior.

Elliot: Junior seemed nervous?

George: Yeah, he seemed nervous from the beginning, but like that's because he was doing it, uh, outside. But, uh, like, like I couldn't see nothing going wrong because we walked away with the money. They took the package, you know, and like, there was Richie's sister's brother, so I didn't even think about it, you know what I mean, til now.

Elliot: You mean Richie's girlfriend's brother?

George: Girlfriend.

Elliot: Had you had any other involvements with Richie and the sale of any stuff at all?

George: No.

Elliot: How did it come about that Richie got you into this particular situation?

George: Uh, like I guess, uh Richie met his, uh, his girlfriend's brother and like Richie knows me and he knows what I do and they came down and just called me and I just came out, so you know, it was a quick thing.

Elliot: How many days before, or how many hours before did Richie first contact you about this thing?

George: Oh, that, that particular thing went on right away, like I don't like, like uh, he just brought them down and that was it. But, but uh, I don't know, you know what I mean, like

Elliot: It was all the same day?

George: I don't know if he mentioned it before, but like to me that thing was a surprise, you know what I mean, cause uh, he came down and said he had these people waiting so I packed up what I had to pack up and I brought it, we brought it to them.

Elliot: Had he ever bought any drugs from you before...

George: No.

Elliot: ...for himself or for any other purpose?

George: No.

Elliot: Okay. Uh, alright, I, I appreciate very much that you called me because it was very important to me to know whether this was a one-shot transaction or whether this was something that had occurred in the past. Do you know if Richie uses drugs.

George: No.

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/ 3 /

Elliot: He doesn't.

George: Not at all.

Elliot: Uh, how about this guy Torres? Do have any dealings of any kind with him?

George: I know him.

Elliot: You know him from the neighborhood?

George: Yeah, and he had nothing to do with it at all. Like, you know what I mean?

Elliot: He had nothing to do with this particular sale?

George: No, No.

Elliot: Okay, um, I. I appreciate, uh, that you called me and, uh, let me have a word with, uh, with Richie, okay?

George: Okay.

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2 MR. TAIKEFF: Would the Government state whether
3 she is available to testify?

4 MR. GIULIANI: I don't know if she is available
5 to testify.

6 THE COURT: She is not here with you, not available
7 to you?

8 MR. GIULIANI: She is just as available to Mr.
9 Taikeff, a private citizen.

10 MR. TAIKEFF: I understand that, your Honor, but
11 I was informed that today's hearing would concern yesterday's
12 incident, and so neither --

13 THE COURT: I am not restricted to what you were
14 informed.

15 MR. TAIKEFF: I understand, but I would like an
16 opportunity to call her as a witness.

17 THE COURT: Well, you can do anything you want, and
18 I will listen to anybody that is produced.

19 MR. TAIKEFF: I just wanted to indicate to your
20 Honor that I think now she is an essential witness.

21 Q In connection with the testimony or the expected
22 testimony of Junior, until when were you under the impression
23 that Junior would testify in this case?

24 A Until I contacted him and he told me that he was
25 unwilling to testify, because he had been threatened.

2 Q What date was that?

3 A I don't recall the date, counsel.

4 THE COURT: Well, approximately.

5 Q Approximately.

6 A I think maybe around November, October, something
7 around that.

8 Q Did you ever communicate that information to anyone
9 associated with the United States Attorney's office?

10 A I believe I told Mr. Vierlla that, that he would not
11 want to testify, because he had been threatened.

12 Q And when, based on your best recollection, did you
13 tell that to Mr. Vierlla?

14 A When Mr. Virella had -- when he got the case.

15 Q Approximately when would that be? A month ago, two
16 months ago? I don't need it exactly.

17 A I think it was maybe only about three weeks ago,
18 a couple of weeks ago. When I first met Mr. Virella and he
19 asked me to produce the informant, that's when I told it to
20 him.

21 Q Do you know whether Mr. Virella has ever interviewed
22 the informant: Junior?

23 A Yes. He interviewed the informant.

24 Q On how many occasions in the past two months did he
25 do so?

2 A He was here several times in the last week, couple
3 weeks ago, a week ago. He was here maybe three times, I
4 think.

5 Q Now, there was, all together, how many minutes or
6 hours of dialogue between them?

7 A I couldn't answer that.

8 Q What is your best estimate?

9 A I don't know. I would only have to be guessing.
10 I couldn't give you a correct estimate.

11 Q More than five hours or less than five hours?

12 A It was more than five hours.

13 Q More than five hours of conversation between them
14 in the last six or eight weeks?

15 A I would say so.

16 Q Were you present during all of those conversations?

17 A No, sir.

18 Q Were you present during some of them?

19 A Yes, sir.

20 Q Would you say there was more than ten hours of con-
21 versation between them?

22 A Continued conversation?

23 Q Well, fifteen minutes at one time --

24 A I know he was here a couple of days, counsel. I
25 couldn't tell you how long they were talking. They were not.

2 talking all the time. Just present in the office.

3 Q When was the last time, as far as you know, that
4 Mr. Virella or anybody else in the United States Attorney's
5 office had an interview or a conference with this Junior?

6 A I don't know. He was here one day last week. I
7 wasn't present. I don't know what transpired that day.

8 Q Do you remember a day during the week of March 24th,
9 sir, when I waited outside Mr. Vierlla's office for a half
10 hour, from approximately five to five-thirty, and Junior was
11 inside Mr. Virella's office? Do you remember that?

12 A Yes, sir. That's true.

13 Q Was there conversation between Junior and/or you
14 and Mr. Virella at that time?

15 A There was conversation, yes.

16 Q And Junior was a participant in that conversation;
17 is that right?

18 A I believe so, yes.

19 Q He wasn't forced physically to have that conversa-
20 tion, was he? He did so voluntarily?

21 A That's correct.

22 Q Did Junior ever tell you, in the last two weeks, that
23 the reason he wasn't testifying was because he had some
24 fear for his own safety?

25 A I believe that he stated that, yes. When he was

2 asked by Mr. Virella why he did not want to testify, I think
3 he repeated himself again and said that, gave us the reason.

4 Q Are you aware of the fact that Mr. Virella repre-
5 sented to this Court that the reason Junior is not testifying
6 is on advice of counsel, because of his protections under the
7 Fifth Amendment?

8 A I am aware of that.

9 MR. GIULIANA: Objection, your Honor.

10 THE COURT: He has answered it, in any event, so
11 I will allow the answer to stand.

12 Q Did you ever interview the mother to determine what
13 she knew about these alleged threats?

14 A No, sir.

15 Q Did you ever interview Maria about these alleged
16 threats?

17 A I was present an an interview; yes, sir; I was.

18 Q Did Mr. Virella conduct that interview?

19 A Yes, sir; he did.

20 Q As far as you know, was that the first time that Mr.
21 Virella learned that information about the alleged threat
22 from Maria?

23 A That is the first time I think he ever spoke to
24 her, if that is what you are asking me.

25 Q But prior to the time of that interview between Mr.

MR. TAIKEFF: I have no further questions.

THE COURT: Step down.

(Witness excused.)

MR. TAIKEFF: Your Honor, the defense will call Antonio --

THE COURT: Wait a minute. We don't know whether the Government is finished yet.

MR. GIULIANI: Your Honor, we will call one other witness: Mr. Virella.

THE COURT: All right.

F E D E R I C O V I R E L L A , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Virella, you are an assistant United States Attorney; is that correct?

A Yes, sir.

Q You were assigned to prosecute this case involving Mr. Anglada and others; is that correct?

A Correct.

Q Did there come a time when you had a conversation with a Mr. Santana, who was the informant in this case, in which Mr. Santana related to you a threat made to him by Mr.

2 Anglada?

3 A Yes, sir.

4 Q And now I am referring to a threat on or about
5 September 3, 1974.

6 A That's right.

7 Q And this is a threat separate and distinct from
8 what we have heard testimony about so far?

9 A That's correct.

10 Q Would you tell us what Mr. Santana told you?

11 A When I interviewed Mr. Santana on the Thursday be-
12 fore the trial was to begin, he had told me that before he
13 took Detectives Nieves and Bovega to meet Mr. Torres, that
14 he met, he had been playing volley -- handball at 92nd Street
15 and York Avenue, or whatever, in that vicinity, and when I
16 came out of the playground he had met Mr. Santana -- rather,
17 Mr. Anglada on Mr. Torres, and they engaged in a conversa-
18 tion in which one or both of them had told him that if any-
19 thing happens to any of us as a result of the upcoming sale,
20 that he was going to have some trouble with them.

21 Q I'm sorry. I didn't hear the last part.

22 A That he would have some trouble with them.

23 MR. GIULIANI: I have no further questions.

24 MR. TAIKEFF: May I examine?

25 THE COURT: Certainly.

CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Was the day of your interview that you have testified about on Thursday, the 20th of March 1975?

A If the 20th was a Thursday, yes, that's when we had contacted Mr. Santana so that you would be able to speak to him. At your request.

Q And that was the day that Mr. Holzman and I came over in order to, as far as you could tell, interview Mr. Santana; is that correct?

A Mr. Holzman came first and you later came, an hour or so later.

Q How much time did you spend speaking with Mr. Santana that day?

A I would say about half an hour or, more or less. I was in and out of the office.

Q And you discussed with him primarily the facts relating to the trial which has just concluded and the events with which that trial was concerned; is that right?

A That's correct.

Q Did he invoke his Fifth Amendment privilege at any time in the course of that conversation?

A Not at that time, sir.

Q Relative to the appearance of Mr. Holzman, when did

2 to call him were he available? Do you recall that incident?

3 A Some of that I do recall. I would have to go back
4 and read over the record as to the specific objection and
5 the discussion that we had at the side bar as to who wanted
6 to call whom.

7 Q Let me just spend another moment and see if I can
8 further refresh your recollection.

9 Do you recall at that point, and apparently based
10 on my representation to the Court, that the jury went out,
11 Drucker was asked to step down, and Junior was called to the
12 stand at the Court's direction?

13 A Correct. I remember that.

14 Q Now, do you recall, just prior to that, while we were
15 at the side bar, that you represented to the Court why Junior
16 wouldn't testify in this case?

17 A Correct: that he would take the Fifth Amendment.

18 Q And that he was doing so on his attorney's advice.
19 Isn't that what you told the Court?

20 A I believe so, yes.

21 Q You said nothing --

22 MR. TAIKEFF: Withdrawn.

23 Q Do you recall saying anything to the Court that
24 there was any reason relative to a threat that he wasn't
25 testifying?

A At that time, as far as I can remember, I think I stated that it was -- he had intentions of pleading the Fifth Amendment, and the questions were asked either by the Government or by the defense.

Q Did you question Junior or do you recall whether you questioned Junior when he was examined on the voir dire, so to speak, by the Court?

A I don't think I presented any questions. I think it was simply Judge Cannella who had questioned him.

Q Did you, as far as you can recall, during the proceedings subsequent to the side bar, represent to the Court or tell the Court that Junior was not testifying because he was fearful of his safety?

A I think I had stated in the side bar conference that he had intentions of pleading the Fifth Amendment.

Q I understand that, and my question to you --

A I did not make any comments concerning any threats at all.

Q Do you know whether Junior is presently available to be subpoenaed in connection with this matter? Do you know his whereabouts?

A I have no idea. I guess that they could --

MR. GIULIANI: Objection, your Honor.

THE COURT: Well, if you want Junior, the Court will

2 help you any way that we can, so I don't know what relevance
3 that has.

4 MR. TAIKEFF: I would be happy to accept the Court's
5 assistance. in that regard.

6 I have no further questions of this witness, your
7 Honor.

8 MR. GIULIANI: No further questions.

9 (Witness excused.)

10 THE COURT: Anything else on behalf of the Govern-
11 ment?

12 MR. GIULIANI: Nothing else on behalf of the
13 Government.

14 THE COURT: The Government rests?

15 MR. TAIKEFF: Your Honor, I can only call one wit-
16 ness at this particular time.

17 THE COURT: I don't care what you do. You have
18 the floor. You do what you want. I am not suggesting or
19 denying any right that you have. You can call whomever you
20 want.

21 MR. TAIKEFF: Mrs. Espada.
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23
24
25



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